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In re Application of	:	
DICKMANNNS, Achim et al	:	DECISION ON
Serial No.: 08/981,583	:	
PCT No.: PCT/EP96/02747	:	PETITION TO
Int. Filing Date: 24 June 1996	:	
Priority Date: 23 June 1995	:	
Attorney Docket No.: 028622/0101	:	WITHDRAW ABANDONMENT
For: IMMORTALIZED EPITHELIAL	:	
TUMOR CELL	:	

This is a response to applicants' "Request to Rescind Abandonment of Application," filed 23 December 1998, which is treated as a petition under 37 CFR 1.182 to extract the declaration, assignment, and check for \$170.00 filed 03 February 1998 from application 08/981,053 and withdraw the holding of abandonment of the instant application. A fee of \$130 under 37 CFR 1.17(h) for the petition under 37 CFR 1.182 will be charged to deposit account 19-0741 as authorized.

**BACKGROUND**

On 24 June 1996 (23 June 1996 was a Sunday), applicants filed international application PCT/EP96/02747 claiming a priority date of 23 June 1995. A copy of the international application was communicated from the International Bureau to the United States Patent and Trademark Office on 09 January 1997.

On 30 December 1996, a Demand was filed with the International Preliminary Examination Authority electing the United States. The election was made prior to the expiration of 19 months from the priority date. Accordingly, the deadline for submission of a copy of the international application and payment of the basic national fee was extended to expire thirty months from the priority date, i.e., 23 December 1997.

On 23 December 1997, applicants filed a transmittal letter for entry into the national stage in the United States under 35 U.S.C. 371 which was accompanied by, *inter alia*, a check to pay the basic national fee and extra claims, and; authorization to charge Counsel's Deposit Account No. 19-0741 for any additional fees as required.

On 05 March 1998, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS (Form PCT/DO/EO/905) requiring a declaration in compliance with 37 CFR 1.497 and a surcharge under 37 CFR 1.492(e) within one month to avoid abandonment of the application.

On 20 November 1998, the DO/EO/US mailed a NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) holding the instant application abandoned for failure to timely respond to the Form PCT/DO/EO/905 mailed 05 March 1998.

On 23 December 1998, applicants filed the instant petition which was accompanied by, *inter alia*, a postcard receipt indicating that a transmittal letter, declaration, assignment, and check for \$170.00 was mailed 03 February 1998; a copy of the declaration; a postcard receipt indicating that a small entity declaration was mailed 26 February 1998; a copy of the verified statement claiming small entity status.

### **DISCUSSION**

A review of Patent and Trademark Office (PTO) records, the above captioned application, and application number 08/981,053 and PTO records show that the instant application was held abandoned for failure to respond to Form PCT/DO/EO/905 mailed 05 March 1998 because the papers filed 03 February 1998 and 26 February 1998 were captioned with the wrong application number and were consequently entered into application 08/981,053.

Applicants' petition requests that the PTO withdraw that holding of abandonment on the basis of the papers filed 03 February 1998. Applicants, in effect, request that, in spite of applicants' error in captioning on the postcard receipt and transmittal letter, the papers and fees filed 03 February 1998 be treated as a timely response in the NOTIFICATION OF MISSING REQUIREMENTS and that they be extracted from application 08/981,053 and entered in the instant application. This request, which is treated as a petition under 37 CFR 1.182, is granted.

The papers and fees filed 03 February 1998 and 26 February 1998 have been extracted from application 08/981,053 for entry in the instant application. As these papers are considered a timely response to the Form PCT/DO/EO/905 mailed 05 March 1998, the NOTIFICATION OF ABANDONMENT is VACATED.

**CONCLUSION**

As discussed above, the petition under 37 CFR 1.182 to treat the papers filed 03 February 1998 as a timely response in this application and to withdraw the holding of abandonment is **GRANTED**.

The surcharge fee of \$130.00 and assignment fee of \$40.00 have been moved from application number 08/981,053 to the above captioned application

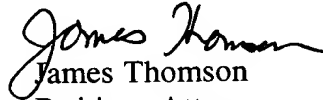
Applicants have completed the requirements for acceptance under 35 U.S.C. § 371(c). The application has an international filing date of 24 June 1996, under 35 U.S.C. 363, and a 35 U.S.C. 102(e) and 371(c) date of **03 February 1998**.

This application is being forwarded to the National Stage Processing Division of the Office of PCT Operations for continued processing.



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